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FILED

September 26 2007

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

By: Tara Adams Ragone
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Administrative Action

ALAN G. KELSEY, M.D.
License No. MA03789800

SUPPLEMENTAL CONSENT ORDER

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

This matter was opened to the State Board of Medical Examiners ("Board") upon the Board's receipt of a report on behalf of P.O., Dr. Kelsey's Board-approved nurse monitor and patient, that Dr. Kelsey had engaged in acts violative of his probation with the Board and of the Board's statutes and regulations.

Dr. Kelsey's medical license in New Jersey currently is subject to terms of probation pursuant to a Consent Order filed by the Board on March 23, 2007. Said Consent Order suspended Dr. Kelsey's license for three years retroactive to January 12, 2007, which suspension was stayed and ordered to be served as a period of

probation subject to various terms and conditions. Among the terms of probation was a requirement that Dr. Kelsey have a Board-approved monitor present whenever he interacts with female patients, female employees, and/or any other females at his medical office, in a healthcare facility, and/or in the homes of patients.

Based on the investigative materials developed, the Board finds that it is necessary to revise the terms of Dr. Kelsey's probation as set forth in the March 23, 2007 Consent Order as a result of the reports of Dr. Kelsey's inappropriate touching of P.O. in violation of the Board's Sexual Misconduct Regulation, N.J.A.C. 13:35-6.3(c), (d), (h), (i), and (j), and N.J.S.A. 45:1-21(e) and (h).

Dr. Kelsey, through his Counsel, Susan Fruchtman, Esq., has notified the Board that he desires to resolve the matter without the need for an administrative hearing. The Board has determined that the within disposition is adequate to protect the public health, safety, and welfare. Dr. Kelsey consents and agrees to each and every term of this Consent Order. For such reasons and other good cause shown,

IT IS on this 26 day of Sept, 2007

ORDERED:

1. The conditions of probation set forth in the March 23, 2007 Consent Order hereby are revised as follows:

(a) Dr. Kelsey shall not treat any female patient in any location whatsoever during the period of probation.

(b) Dr. Kelsey, at his sole expense, within one (1) week of entry of this Consent Order shall propose a new comprehensive independent monitoring arrangement to ensure that an independent, Board-approved monitor shall observe all of his interactions with female employees and any other females (such as the mothers of pediatric patients) at his medical office, in a healthcare facility, and/or in the homes of patients. Said monitoring arrangement is subject to Board-approval and must include, at minimum, the following:

(i) A Board-approved monitor who is a licensee of a New Jersey professional board subject to the Licensee Duty to Cooperate regulation, N.J.A.C. 13:45C-1.1 et seq.

(a) The Board hereby puts Dr. Kelsey on notice that, in considering whether to approve a given monitoring proposal, the Board strongly prefers that he employ the services of an independent agency that employs its own independent and trained monitors, and will not rely on individuals who ever have been employed by Dr. Kelsey or his medical practice, to serve as his monitor. Despite this strong preference, the Board will consider alternative proposals for monitoring that clearly and comprehensively preserve and protect the critical independence and objectivity of the monitor. For example, in the event Dr. Kelsey

proposes to contract with an independent firm that does not place its own employees into Dr. Kelsey's office, at minimum such firm must independently train and supervise Dr. Kelsey's Board-approved monitor; the Board-approved monitor must be an independent contractor and may not become an employee of Dr. Kelsey or his medical practice; and the independent firm shall implement various strategies to ensure the continued independence of the Board-approved monitor, including, but not limited to, regular unannounced field observations and interviews of the monitor and Dr. Kelsey and use of a hotline by which patients, employees, and visitors may independently report inappropriate behavior by Dr. Kelsey in his professional activities. The Board will not approve the use of any individual as Dr. Kelsey's monitor who has been employed by Dr. Kelsey and/or his medical practice prior to entry of this Order.

(b) The sole exception to the Board's refusal to approve any past or present employee of Dr. Kelsey as his monitor, as expressed in paragraph 1(b)(i)(a) supra, concerns Judy L. Watts, L.P.N., who currently is employed by Dr. Kelsey as his Board-approved monitor. The Board in no way now is approving or signaling that it will approve Ms. Watts to continue as Dr. Kelsey's monitor after entry of this Supplemental Consent Order. However the Board hereby agrees to review Ms. Watts' candidacy in the context of the entire monitoring proposal, including the extent

of independent, competent training and verification of the independence of Ms. Watts. At minimum, though, the monitoring arrangement must require Ms. Watts to cease to be employed directly by Dr. Kelsey and/or his medical practice. The Board reserves the right to refuse to approve Ms. Watts to continue as Dr. Kelsey's monitor if it is not satisfied, in the context of the entire monitoring proposal, that Ms. Watts is sufficiently independent of Dr. Kelsey and his medical practice to adequately fulfill the monitoring functions.

(ii) Each Board-approved monitor shall discuss his/her duties with the Board's Medical Director or designated employee of the Board; maintain a log of Dr. Kelsey's daily activities sufficient to assure the Board that the monitor has accompanied Dr. Kelsey at all times he interacts with any female in the course of his professional activities; and provide monthly written reports to the Board's Medical Director, or designated employee of the Board, which reports the monitor independently prepared and submitted in the first instance to the Board, i.e., without prior review by Dr. Kelsey or anyone on his behalf; and advise the Board immediately in the event s/he is made aware of or personally perceives any untoward or questionable professional or personal conduct by Dr. Kelsey.

(iii) The Board-approved monitor shall not be subject to the supervision of Dr. Kelsey, his staff, family, or

agents including, but not limited to, Kathy Kovacs, Pauline Kelsey, or Dr. Kelsey's counsel.

(iv) Dr. Kelsey shall be responsible for all of the costs associated with the monitoring arrangement approved by the Board.

(c) Payment of the State's investigative costs in the amount of \$6,737.85 and attorney's fees in the amount of \$13,810.50, for a total of \$20,548.35. Said total amount is in addition to the amounts required in the March 23, 2007 Consent Order and shall be paid in equal monthly installments over a maximum period of thirty-six (36) consecutive months at the Court Rule rate of interest, which monthly installments shall be due by the 15th day of each month, commencing thirty (30) days after the entry of this Order and continuing until the balance is paid in full. All payments shall be submitted by certified check or money order made payable to the State of New Jersey and shall be sent to the attention of the Executive Director of the Board. The Board reserves the right to file a certificate of debt for the full amount of costs outstanding in the event any installment payment is received by the Board more than five (5) days past the due date. Failure to make timely payments shall be considered a violation of this Order, shall result in acceleration of the balance of debt, and shall constitute professional misconduct pursuant to N.J.S.A.

45:1-21(e), thereby subjecting Dr. Kelsey to any and all remedies available to the Board pursuant to N.J.S.A. 45:1-21 and 22.

2. Dr. Kelsey's probation as set forth in the March 23, 2007 Consent Order and modified hereby, terminates on January 11, 2010. Dr. Kelsey shall not seek and will not be granted further modification of the terms of his probation. Upon the completion of the period of probation the restrictions embodied in paragraph 1 continue until further order of the Board upon consideration of an application for modification from Dr. Kelsey. Payment of all costs pursuant to paragraph 1(d) herein is a pre-condition to the Board's consideration of any application for modification. Additional prerequisites to modification will be prescribed by the Board subsequent to Dr. Kelsey's testimony before a Board Committee and may include evaluation and treatment as the Board deems necessary. Upon Dr. Kelsey's request, his appearance before a Board committee for the purposes of seeking modification of practice restrictions shall be scheduled by the Board no earlier than December 2009 and, absent unforeseen circumstances, no later than January 31, 2010.

3. Dr. Kelsey shall comply with the attached "Directives Applicable to Any Medical Board Licensee Who Is Disciplined or Whose Surrender of Licensure Has Been Accepted," which Directives are incorporated herein by reference.

4. Dr. Kelsey acknowledges that any material violation of any term of the March 23, 2007 Consent Order, this Supplemental

Consent Order, and/or any Board statute or regulation governing the practice of medicine and surgery in the State of New Jersey shall constitute a violation of the terms of his probation as set forth in the March 23, 2007 Consent Order and revised hereby.

Dr. Kelsey further acknowledges that the Board will deem any misconduct directed toward his Board-approved monitor and/or any behavior by him to evade the monitoring requirements as a violation of his probation and a failure to comply with a Board order in violation of N.J.A.C. 13:45C-1.4.

5. Should Dr. Kelsey violate the terms of his probation as discussed in paragraph 4 supra, the Board reserves the right, in addition to having the right to pursue any additional discipline permitted by law, to order the activation of any remaining period of the stayed portion of Dr. Kelsey's suspension under the March 23, 2007 Consent Order. In the event the Attorney General makes an application to the Board for the activation of Dr. Kelsey's remaining suspension, Dr. Kelsey shall be given a hearing on short notice before a Committee of the Board, which hearing shall be limited to whether Dr. Kelsey has violated the terms of his probation.

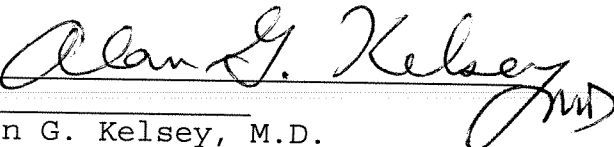
6. The Board and Attorney General reserve the right to investigate allegations of misconduct by Dr. Kelsey that occurred prior to entry of the instant Order.

7. This Order supplements and does not supersede the Consent Order filed in this matter on March 23, 2007. Specifically, it revises paragraphs 1(d) and 3 of the March 23, 2007 Consent Order. Any term or condition set forth in the March 23, 2007 Consent Order that is not discussed herein is not affected by this revision and continues in full force and effect.

STATE BOARD OF MEDICAL EXAMINERS


Mario Criscito, M.D., President

I have read the within Order. I understand the Order, and I agree to be bound by its terms and conditions. I hereby consent to the entry of this Order.

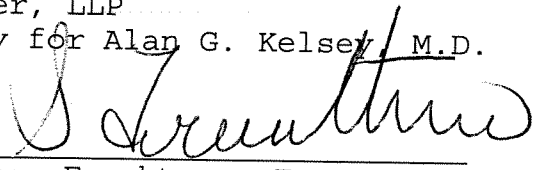

Alan G. Kelsey, M.D.

Date 9/12/2007

I hereby consent to the form and entry of this Order.

DeCotiis, FitzPatrick, Cole &
Wisler, LLP
Attorney for Alan G. Kelsey, M.D.

By:


Susan Fruchtman, Esq.

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq: Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her

licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

ADDENDUM TO THE DIRECTIVES

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number¹: _____

List the name and address of any and all Health Care Facilities with which you are affiliated:

List the names and addresses of any and all Health Maintenance Organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
 - (2) Which censures, reprimands or places on probation,
 - (3) Under which a license is surrendered.
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Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.